

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

Food Lion, LLC and Maryland and Virginia
Milk Producers Cooperative Association, Inc.,

Plaintiffs,

v.

Dairy Farmers of America, Inc.,

Defendant.

Case No.: 1:20-cv-00442

DECLARATION OF MARK LATVA

I, Mark Latva, hereby declare the following to be true and correct to the best of my personal knowledge and belief.

1. I am the Vice President of Category Management at Food Lion, LLC (“Food Lion”). I have been in my current position for 1 year. I was previously the Director of Sourcing Support at Retail Business Services, LLC, which provides services to brands like Food Lion, for 1 year and Director of Strategic Sourcing at Delhaize America Shared Services Group, LLC, which was a shared service provider, for 4 years. In these roles, I have overseen the procurement of fluid milk, specifically for Food Lion.

2. I submit this sworn statement in connection with the Motion for a Preliminary Injunction to obtain certain relief relating to Dairy Farmers of America, Inc. (“DFA”)’s acquisition of Dean Foods Company (“Dean”)’s milk processing facilities in the Carolinas. The transaction concerns me because of its potential to raise prices for Food Lion and its customers.

3. Food Lion, which operates more than 600 stores in North and South Carolina,¹ is one of the largest retail purchasers of processed milk in the Carolinas. Food Lion sells more than 92% of its milk under private label, meaning under the Food Lion brand in half gallon or gallon jugs. Milk is a grocery staple and a growing category at Food Lion. While other supermarket chains have seen sales of milk decline, Food Lion's customers continue to demand milk.

4. Food Lion obtains that milk through a Request for Proposal ("RFP") process. RFPs are determined by distribution center. Food Lion has two distribution centers in North Carolina and one in South Carolina. Distribution Center 4 is located at 2940 Arrowhead Road in Dunn. Distribution Center 10 is located at 2085 Harrison Road in Salisbury. Distribution Center 30 is located at 6800 Snyder Street in Ellore. The bidder's distance from each of these distribution centers is important because the cost of transporting milk is high.

5. There are currently limited milk supply options for Food Lion. There are only four processors in North and South Carolina: Dean, Kroger-owned Hunter Farms², Borden, and Milkco. Borden is in bankruptcy, and Milkco is not an option because of incompatible packing.³

6. I believe Dean is aware of Food Lion's limited options. Dean's prices for milk sold or offered to Food Lion have been materially higher than other bids as described in more detail below.

7. Food Lion already faces thin profit margins on processed milk. To continue getting affordable milk, Food Lion has resorted to buying milk from one of its fiercest competitors, Kroger (Hunter Farms). This is not a long term solution since the facility is already operating near capacity, and Kroger will always be the preferred customer for its processor.

¹ Food Lion operates more than 1,000 stores in 10 states.

² Hunter Farms is owned by Harris Teeter Supermarkets, Inc., a subsidiary of the Kroger Company.

³ Milkco does not use milk crates.

8. In addition, Kroger relies on Maryland and Virginia Milk Producers Cooperative Association, Inc. (“MDVA”) for raw milk. I am concerned that if the acquisition results in reduced raw milk competition from MDVA, the “downstream” result may be that Kroger either cannot obtain enough processed milk to serve Food Lion, or that Kroger will pay a higher price for raw milk and pass on that increase to Food Lion.

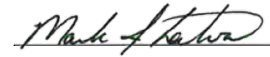
9. The continued viability of MDVA at both the raw milk and processed milk levels is vital to Food Lion. In addition to relying on Kroger for processed milk produced from MDVA’s raw milk, Food Lion has also resorted to shipping MDVA processed milk in from Virginia to avoid Dean’s prices. The MDVA facility in Newport News, Virginia supplies the Dunn distribution center even though the processing facility is approximately 215 miles away (the closest Dean plant is 105 miles away). To be competitive Food Lion would be much better served by a source in the Carolinas that avoids this transportation cost, but even this undesirable option will be gone if MDVA does not survive.

10. To best describe the lack of competition, it is easiest to provide an example of a recent RFP process. At the end of 2017, Food Lion issued an RFP seeking an alternative processed milk supplier for several of its distribution centers, including those in Salisbury, North Carolina and Dunn, North Carolina. Dean was the incumbent bidder for the Salisbury and Dunn distribution centers. Food Lion received bids from Dean, Borden, Kroger (Hunter Farms), and MDVA for the Dunn distribution center and from Dean, Kroger (Hunter Farms), and Milkco for the Salisbury distribution center. Kroger made clear that it only had the capacity to provide milk to one of the two distribution centers for which it bid. Borden was not a viable option because its freight costs were too high because of its coastal location.

11. For the Salisbury distribution center, the price Food Lion was paying for Dean milk, and the Dean bid, were higher than the Kroger (Hunter Farms) bid by more than 10% and more than 7%, respectively. For the Dunn distribution center, the price Food Lion was paying for Dean milk, and the Dean bid, were higher than the MDVA bid by more than 8% and more than 4%, respectively.

12. While competition is currently limited, it will be much worse if MDVA cannot continue to provide raw milk to Kroger and cannot survive as a milk processor in Newport News.

I declare under penalties of perjury that the foregoing is true and correct. Executed on May 13, 2020 in Salisbury, North Carolina.

A handwritten signature in black ink, appearing to read "Mark J. Latva", written over a horizontal line.

Mark J. Latva